



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 2, 2003

Ms. Cara C. Wood
Assistant District Attorney
Office of the District Attorney
9th Judicial District
301 North Thompson, Suite 106
Conroe, Texas 77301-2824

OR2003-2242

Dear Ms. Wood:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178671.

The Office of the District Attorney, 9th Judicial District (the "district attorney") received a request for specified investigatory files and a specified letter. You claim that some of the requested information is not subject to the Public Information Act (the "Act"). You also claim that the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered your arguments and have reviewed the submitted information, which includes representative sample documents.¹

Initially, we note that this office previously addressed the submitted information that is responsive to "Request #2" in Open Records Letter No. 2003-0432 (2003). Specifically, we ruled in that decision that to the extent that the submitted information was obtained by the district attorney pursuant to a grand jury subpoena or at the direction of the grand jury, the

¹ We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information was in the custody of the district attorney as agent of the grand jury and was not subject to disclosure under the Act. Otherwise, we concluded that the district attorney may withhold a submitted Internal Affairs (the "IAF") file under section 552.108(a)(1) of the Government Code. You inform us that the law, facts, and circumstances on which that ruling was based have not changed since the issuance of that ruling. Accordingly, we conclude that the district attorney may rely on our decision in Open Records Letter No. 2003-0432 (2003) with respect to the information that you have submitted to us as responsive to "Request #2." *See* Gov't Code § 552.301(f); *see also* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, the first type of previous determination exists where requested information is precisely the same information as was addressed in a prior attorney general ruling, the ruling is addressed to the same governmental body, and the ruling concludes that the information is or is not excepted from disclosure).

You claim that the submitted information that is responsive to "Request #3," as well as some of the submitted information which is responsive to "Request #1," is held by the district attorney on behalf of a grand jury and is, therefore, not subject to the Act. Article 20.02 of the Code of Criminal Procedure provides for the secrecy of grand jury proceedings. This office has concluded that grand juries are not governmental bodies that are subject to chapter 552 of the Government Code, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552. *See id.* at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld from disclosure only if a specific exception to disclosure is applicable. *See id.* Based on our review of your representations and this particular information, we agree that the information that we have marked within the submitted information that is responsive to "Request #1," as well as the entirety of the submitted information that is responsive to "Request #3" is not subject to disclosure under the Act. *See id.* at 4. Accordingly, we conclude that the district attorney need not release this particular information to the requestor.

You claim that the remaining submitted information pertaining to "Request #1" is excepted from disclosure as attorney work product pursuant to section 552.108 of the Government Code. We note that this information constitutes a completed investigation made of, for, or by the district attorney. Thus, section 552.022(a)(1) of the Government Code provides that this information is not excepted from required disclosure under the Act, except as provided by section 552.108, or unless the information is expressly confidential under other law. *See* Gov't Code § 552.022(a). Section 552.108 provides in pertinent part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: . . . (4) it is information that: (A) is prepared by

an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) [a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of 552.021 if: . . . (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108(a)(4), (b)(3), (c). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply the explanation on its face, how and why section 552.108 applies to that information. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Company v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993, orig. proceeding), held that "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. Because the requestor in this instance seeks the investigatory file relating to a specified official oppression claim, we conclude that the district attorney may withhold most of the remaining submitted information that is responsive to "Request #1" pursuant to section 552.108 of the Government Code as attorney work product.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we conclude that the district attorney must release all basic information that is contained within this remaining submitted information to the requestor. *See* Open Records Decision No. 127 (1976) (summarizing the types of basic information that must be made available to the public). Because we base our ruling on section 552.108 of the Government Code, we need not address your remaining claimed exception to disclosure.

In summary, the district attorney may rely on our decision in Open Records Letter No. 2003-0432 (2003) with respect to the information that you have submitted to us as responsive to "Request #2." The district attorney need not release the information that we have marked within the submitted information that is responsive to "Request #1," as well as the entirety of the submitted information that is responsive to "Request #3," since such information is not subject to disclosure under the Act. With the exception of basic information which must be released to the requestor, the district attorney may withhold the remaining submitted information that is responsive to "Request #1" pursuant to section 552.108 of the Government Code as attorney work product.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

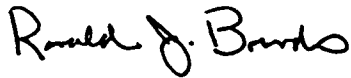
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Ronald J. Bounds". The signature is written in a cursive, slightly slanted style.

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 178671

Enc. Marked documents

c: Ms. Sue Thackeray
The Courier
P.O. Box 609
Conroe, Texas 77305-0609
(w/o enclosures)